

VIRGINIA:

BEFORE THE BOARD OF DENTISTRY

IN RE: KIMBERLY CERTA, D.D.S.
License No. 0401-006699
Case No. 72536

ORDER

Pursuant to § 9-6.14:11 and § 54.1-2400(10) of the Code of Virginia (1950), as amended ("Code"), a Special Conference Committee of the Board of Dentistry ("Committee"), composed of Gary E. Taylor, D.D.S., Gopal S. Pal, D.D.S., and Stephany P. Olenic, R.D.H., met on March 17, 2000, in Henrico County, Virginia, to receive and act upon evidence that Kimberly Certa, D.D.S., may have violated certain laws and regulations governing the practice of dentistry in Virginia. Dr. Certa was not present and was not represented by counsel. Upon consideration of the evidence presented, the Committee adopted the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Kimberly Certa, D.D.S., holds License No. 0401-006699 issued by the Virginia Board of Dentistry.
2. By letter dated March 14, 2000, Robert J. Zelnick, Esquire, counsel for Dr. Certa, advised the Board that Dr. Certa was waiving her right to the informal conference scheduled for March 17, 2000 and would not be attending. Mr. Zelnick further stated that "this waiver does not constitute an admission that Dr. Certa has violated any of the laws and regulations governing the practice of dentistry in the Commonwealth of Virginia, and she reserves all claims and defenses to the allegations against her."

3. Dr. Certa caused to be placed at her office located at 2946-E Chain Bridge Road, Hunter Mill Plaza, Oakton, Virginia, signage wherein she practices, offers to practice, or holds herself out as practicing under a name other than her own: "Softouch Dental Care."
4. Dr. Certa caused to be published in the 1999 Bell Atlantic Yellow Pages for the Northern Virginia area, Virginia, an advertisement wherein she practices, offers to practice, or holds herself out as practicing under a name other than her own: "Soft Touch Dental."
5. Dr. Certa caused stationary, billing statements and business cards to be printed wherein she practices, offers to practice, or holds herself out as practicing under a name other than her own: "Softouch Dental Care" and "Softouch Dental Care of Oakton."

CONCLUSIONS OF LAW

Based upon Findings of Fact #3 through #5, the Committee concludes that Kimberly Certa, D.D.S., has violated § 54.1-2706(A)(7)(iii) and (9), and § 54.1-2718 of the Code and 18 VAC 60-20-180(G) of the Board of Dentistry Regulations.

ORDER

On the basis of the foregoing, the Committee, effective upon entry of this Order, hereby ORDERS that Kimberly Certa, D.D.S., be and hereby CEASE AND DESIST from practicing, offering to practice or holding herself out to practice under a name other than her own. No later than ninety (90) days from the date this Order becomes final, Dr. Certa shall submit proof to the Board that she is in compliance with all laws and Board regulations and Orders regarding trade names and how she holds herself and her practice to the public. Proof of compliance with all laws and Board regulations shall include, but not be limited to, correspondence requesting changes to telephone directory listings to Bell Atlantic and any other telephone directory company which lists Dr. Certa's practice of

dentistry under any name other than her own; copies of new stationery, billing statements and business cards; and pictures of the signage at her office either removed or changed. In the event Dr. Certa fails to comply with this Order within ninety (90) days from the date this Order becomes final, further administrative proceedings shall be convened.

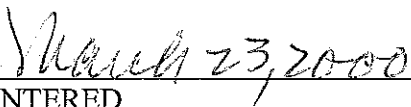
Pursuant to § 9-6.14:14 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as public record and shall be made available for public inspection or copying on request.

If Dr. Certa does not consent to the Committee's decision and desires a hearing before the Board or a panel thereof, she shall notify, in writing, Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad Street, Fourth Floor, Richmond, Virginia 23230-1717 within thirty-three (33) days from the date of entry of this Order. This Order shall become final upon the expiration of the thirty-three day period unless a written request for a formal hearing is received within such time. Upon receiving timely request for a hearing, the Board or panel thereof shall then proceed with a hearing as provided in § 9-6.14:12 of the Code.

FOR THE COMMITTEE



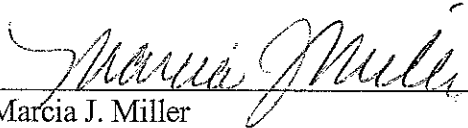
Marcia J. Miller
Executive Director, Board of Dentistry



ENTERED

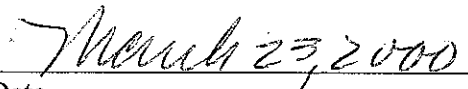
Certificate of Service

I hereby certify that a certified true copy of the foregoing Order was mailed on this day to Kimberly Certa, D.D.S., at 2946-E Chain Bridge Road, Hunter Mill Plaza, Oakton, Virginia 22124, and to Robert J. Zelnick, Esquire, Szabo, Zelnick & Erickson, P.C., Lake Ridge Executive Park, 12610 Lake Ridge Drive, Woodbridge, Virginia 22192.



Marcia J. Miller

Executive Director for the
Board of Dentistry



Date

VIRGINIA:

BEFORE THE BOARD OF DENTISTRY

IN RE: KIMBERLY CERTA, D.D.S.

License No. 0401-006699

Case No. 72536

ORDER

COMES NOW the Board of Dentistry (the "Board") following entry of an Order in the United States District Court for the Eastern District of Virginia dismissing by agreement the matter styled Kimberly Certa, D.D.S. v. Monroe E. Harris, Jr., D.M.D., et al., Civil Action No. 00-1948-A. As part of the Settlement Agreement, parties agreed that the pending administrative proceeding as set forth in the Notice of Hearing and Statement of Particulars mailed to Dr. Certa on March 8, 2001, involving allegations that Certa's practice of dentistry under the trade name "Softouch Dental Care" violated certain statutes and regulations involving the practice of dentistry in the Commonwealth of Virginia would be dismissed with prejudice in accordance with the terms of the Settlement Agreement as incorporated in the Final Order entered by the United States District Court. Said documents are incorporated by reference hereto.

WHEREAS, on the basis of the foregoing and effective upon entry of this Order, the notice of formal hearing originally mailed on March 8, 2001 is withdrawn and Case No. 72536 is DISMISSED with prejudice.

Pursuant to § 9-6.14:14 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as public record and shall be made available for public inspection or copying on request.

FOR THE BOARD

Sandra K. Reen
Sandra K. Reen
Executive Director
Board of Dentistry

2-28-02
Date

Certificate of Service

I hereby certify that a certified true copy of the foregoing Order was mailed on this day to Robert J. Zelnick, Esquire, 12610 Lake Ridge Drive, Woodbridge, Virginia 22192, this 28th day of February, 2002

Sandra K. Reen
Sandra K. Reen
Executive Director for the
Board of Dentistry

2-28-02
Date

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

KIMBERLY CERTA, D.D.S.

Plaintiff

v.

CIVIL ACTION NO. 00-1948-A

MONROE E. HARRIS, JR., D.M.D., et.al.

Defendants

AGREED FINAL ORDER

This day came the parties and represented to the Court that all issues herein have been resolved by agreement, including the claims of both parties for attorneys' fees and costs, as reflected in the Settlement Agreement attached hereto..

Upon consideration whereof, it is hereby ORDERED, ADJUDGED and DECREED that the attached Settlement Agreement is approved, ratified and incorporated into this Final Order, and this case is dismissed with prejudice as settled and is stricken from the Court's docket. Let the Clerk send a copy of this Order to all counsel of record.

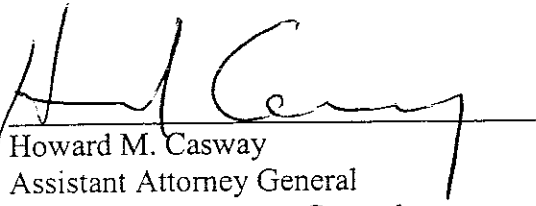
ENTERED: / /

By: _____
United States District Judge

SEEN AND AGREED:

Robert J. Zelnick
Szabo, Zelnick & Erickson, P.C.
12610 Lake Ridge Drive
Woodbridge, VA 22192
Ph: (703) 494-7171
Fax: (703) 643-2666
Counsel for Plaintiff

SEEN AND AGREED:



Howard M. Casway
Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
Ph: (804)
Fax: (804) 371-8718
Counsel for Defendants

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

KIMBERLY CERTA, D.D.S.

Plaintiff

v.

CIVIL ACTION NO. 00-1948-A

MONROE E. HARRIS, JR., D.M.D., et.al.

Defendants

SETTLEMENT AGREEMENT

In order to resolve their respective claims and to avoid the further time and expense of litigation, plaintiff Kimberly Certa, D.D.S. and defendants, Monroe E. Harris, Jr., D.M.D., et.al (collectively "the parties") hereby agree to the following:

1. That the plaintiff, Kimberly Certa, is a licensed Virginia dentist who practices under the trade name "Softouch Dental Care"; that the defendants are the duly appointed members of the Virginia Board of Dentistry whose duty it is to enforce the statutes and regulations governing the practice of dentistry in the Commonwealth of Virginia; and that the defendants previously informed the plaintiff that her use of the name "Softouch Dental Care" is a violation of the applicable statutes and regulations of the Board of Dentistry and ordered her to cease and desist from using said trade name and commenced administrative proceedings to enforce the statutes and regulations governing the practice of dentistry in the Commonwealth of Virginia.

2. That the defendants agree to dismiss the pending administrative proceedings with prejudice and not to initiate any future administrative proceedings arising out of the plaintiff's use of the trade name, "Softouch Dental Care". The defendants agree further not to contest in

any subsequent administrative or judicial proceeding, plaintiff's claim that her use of the trade name "Softouch Dental Care" is commercial speech entitled to constitutional protection under the First Amendment to the United States Constitution and that her use of the name "Softouch Dental Care" while merely promotional, is deemed to be a permissible use under the Virginia Code and regulations of the Board of Dentistry.

3. That the plaintiff will be permitted to practice dentistry in the Commonwealth of Virginia, so long as she is properly licensed, under the trade name "Softouch Dental Care", and that the defendants agree not to contest in any judicial or administrative proceeding her subsequent use of said trade name and agree, that its use does not violate Virginia Code §§ 54.1-2706(A)(7), 54.1-2706(A)(9) and 54.1-2718 and/or the regulations of the Virginia Board of Dentistry, including but not limited to 18 VAC60-20-180(F) and (G).

4. That the plaintiff will also be permitted to use the slogan "practicing dentistry with a soft touch" and that the use of such slogan will not be deemed to violate the aforesaid statutes or regulations.

5. That the Board of Dentistry, on behalf of the defendants, shall pay to Robert J. Zelnick, as plaintiff's counsel, the sum of \$12,000.00 as reasonable attorneys' fees and costs expended by the plaintiff in this litigation.

6. Provisions of this settlement agreement shall be enforceable by filing an appropriate complaint in the United States District Court for the Eastern District of Virginia, Alexandria Division.

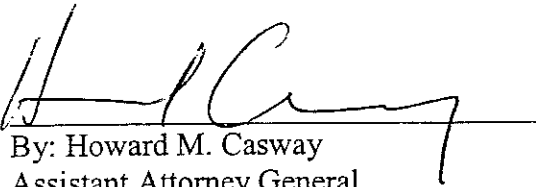
7. The parties agree to the dismissal of this case with prejudice as settled. The parties further agree that this Settlement Agreement shall be approved, ratified and incorporated into the Agreed Final Order dismissing the case.

8. This agreement is binding on the parties hereto and their successors.
9. Nothing in this agreement shall constitute an admission of liability by any party.
10. The undersigned represent that they have the authority to enter in to this agreement and that they have read and understand its terms.

FOR THE PLAINTIFF:
Kimberly Certa, D.D.S.

Kimberly Certa, D.D.S.

FOR THE DEFENDANTS:
Monroe E. Harris, Jr., D.M.D., ET AL


By: Howard M. Casway
Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
Counsel for Defendants

H:/hess/hmc/bod/certa/settlementAgreementrev'd5.doc